

THE WALES ISLAND PACKING COMPANY.

APRIL 13, 1904.—Ordered to be printed.

Mr. LODGE, from the Committee on Foreign Relations, submitted the following

REPORT.

[To accompany Mr. Lodge's amendment to the general deficiency appropriation bill.]

The question of the amount of the injury suffered by the Wales Island Packing Company, resulting from the settlement of the Alaskan boundary, has been referred to the Secretary of the Department of Commerce and Labor for investigation and report, and his report thereon is submitted herewith.

The case arises out of the following circumstances:

By the treaty of March 3, 1903, between the United States and Great Britain it was agreed that the Alaskan boundary line should be laid down in accordance with the true intent and meaning of the description of the boundary in the Russian-British treaty of 1825, and irrespective of any rights and claims which the United States held at the present time in the disputed territory. The Alaska boundary tribunal was constituted to determine how the description of the boundary in the treaty of 1825 should be interpreted. It was not empowered to decide upon the question of whether or not the United States held title to Wales Island and the other territory claimed and held by it as part of Alaska. The decision of that tribunal therefore was not a finding that the United States did not own Wales Island in 1903.

It was shown before that tribunal that since 1825 Russia and the United States in succession had held possession of the island continuously and had exercised sovereignty over it, and that Great Britain had not disputed their rights in the premises, but had, on the contrary, affirmatively recognized and acquiesced therein. The tribunal, however, was empowered to consider these facts only so far as they had a bearing on the intent and meaning of the treaty of 1825. Their bearing upon the title of the United States, by prescription, arising from the continuous assertion of sovereignty by itself and Russia for seventy-eight years since 1825, or by estoppel on account of Great Britain's acquiescence therein, was not within the scope of the juris-

diction of the tribunal and was not passed upon by it. The United States had precluded itself from urging any rights arising since the treaty of 1825 by agreeing in the treaty of 1903 to adopt a line determined by the tribunal as the boundary under the treaty of 1825.

It is evident, therefore, that Wales Island was not lost to the United States in consequence of a judicial determination that the United States did not own it, for no such decision was rendered, but the lost territory was transferred by operation of the provisions of the treaty of 1903, under which a new boundary determined by considerations mutually agreed to was adopted.

The territory lost to the United States by adopting the new boundary therefore stands on exactly the same footing as the territory lost by the readjustment of the boundaries elsewhere by treaty provisions.

The United States has never, in terms, ceded territory over which it has asserted sovereignty, although in every instance in which a boundary has been settled by treaty territory claimed by the United States has been lost to it. The mere fact, therefore, that in this treaty there are no words of cession does not differentiate it from other boundary treaties. Consequently, in this case, as in the cases arising in the settlement of the northeastern boundary, private property lost in consequence of the surrender of some portions of the territory claimed by the United States is, under the precedents established by Congress, to be regarded as private property taken for public purposes, for which, under the constitutional provision, just compensation must be made. A statement containing a list of such precedents is appended hereto.

The facts showing the consequences resulting from the adoption of the new boundary, so far as it affects the Wales Island Packing Company, are reported by the Secretary of the Department of Commerce and Labor to be as follows:

Under the new boundary the possession of Wales Island in Portland Canal, Alaska, passed from the United States to Great Britain. On this island the Wales Island Packing Company, a New York corporation, had acquired a site and established a plant for salmon packing purposes and thereafter carried on there a cannery business. The fishing grounds and the market for its supplies and product were all in the United, and its business was carried on wholly as an American enterprise.

The change of the location of the boundary deprived it of the fishing grounds upon which it relied for its supply of fish, and cut it off effectually from the United States markets for its supplies and its products.

Wales Island having become Canadian territory, a fishing business carried on there would necessarily have become a Canadian fishery and subject to all the disabilities of a Canadian fishery with respect to its fishing grounds and markets on the American side of the boundary. Under the existing laws of the United States such a fishery would be prevented from fishing in United States waters and the product of such a fishery would be subject to a duty of 30 per cent ad valorem when imported into the United States. (Tariff act 1897, sec. 258.)

Moreover, the existing laws, both of the United States and of Canada, would prevent American vessels from landing as heretofore at Wales Island, or carrying freight between the island and American ports without inspection and clearance by custom-house officers, which,

under the local conditions there, could not be accomplished without considerable expense and inconvenience.

It also appears that there are no available fisheries on the Canadian side of the line upon which this company could rely for an adequate supply for the purpose of its business, and that even if such a supply could have been obtained the company would still have been unable successfully to compete in the home markets with the United States canneries, owing to the disadvantage which would be imposed upon it as a Canadian fishery by the tariff, and the additional expense incident to obtaining transportation on American vessels, above alluded to.

It further appears that it would not be possible for the company to avoid these conditions by moving its establishment to a new site on the American side of the boundary and continuing its business there, because, as is elsewhere shown, there is no available site on the American side within reach of the fisheries in that neighborhood upon which the business of the company could be conducted.

The practical effect of the change of the boundary, therefore, so far as this company was concerned, was to put an end to its business operations as an American fishery. The only remaining possibility was that the company might turn to the Canadian market and conduct its business wholly as a Canadian enterprise, but it seems that even this alternative offered no prospect of success, owing to its exclusion from its former fishing grounds and the impossibility of obtaining an adequate supply of fish on the Canadian side of the line.

Apart from every other consideration, however, it is stated by the company that it was unwilling to relinquish its standing as an American enterprise and to transform itself into a Canadian fishery. Even if it had been possible to conduct its business successfully, such a step would have involved not only a transfer of allegiance from the United States to Canada but also a transfer of all its interests and investments into a foreign country, and in exchange for the home market, where its business connections, credit, and reputation were already established, the company would have been obliged to build up its business anew and establish entirely new business connections amid strange surroundings in an unfamiliar and foreign market. Such an alternative the company could not be expected to undertake, even if there had been any prospect of carrying on the business successfully on that basis, which, for the reasons above stated, seemed more than doubtful.

Moreover, it further appears that the plant of the company could not be advantageously moved and has no value independently of its location. The cost of moving such a cannery, it seems, would be more than the cost of replacing it by an entirely new establishment. Evidently the cost of the improvements and alterations in the natural surroundings, such as clearing the woods, grading, etc., and constructing a flume for the fresh-water supply, formed a considerable item in the expense of establishing this plant. Such improvements as these pertain to the soil, and on any new site similar work would have to be done anew, so that they represent no value which could be transferred to a new plant.

It does not appear that there is any other business or use to which the factory and location could be put which would give them any special value, and land without a special value in that particular neighborhood is likely to be a drug on the market.

In view of these considerations it is evident that as a result of the

adoption of the new boundary the company has lost the value of its plant and location as well as its business.

The company has shown that it was desirous of continuing its business as formerly conducted, and when the question first came up it presented its case to the State Department and sought to have some arrangement made by treaty or agreement with Great Britain under which it might be permitted to continue its business on Wales Island without interruption through the change of the boundary line. This apparently was found inexpedient, however, by the State Department, and that Department transmitted the whole case to Congress, earnestly inviting its attention to the situation "for such action as in the judgment of Congress the equities of the case may warrant."

Any relief which would enable the company to continue its business seems to be out of the question and the only alternative, therefore, is for Congress to indemnify the company for the injury occasioned by the adjustment of the Alaskan boundary.

It is evident from these considerations that all that was valuable of the company's property has been destroyed by the act of the Government in surrendering the possession of this island to Canada, and if anything is left to the company it is nothing but a precarious claim to its former location, which may or may not be recognized by Canada, but which in any event, as above shown, is of little value.

The company has been deprived either of the property itself or of the use of the property for the only uses for which it was valuable, which amounts to the same thing on the question of damages.

On the question of the amount of the damages suffered by the company, it is stated in the report that the facts show that on a conservative estimate the sum of \$81,689.60 is a minimum valuation and that, taking all the facts into consideration, a considerably larger sum might fairly be allowed. It is evident that if the company had been left undisturbed the value of what has been lost to it would have proved to be largely in excess of that amount.

It is further evident from the circumstances of the case that the company is entitled to every consideration from the Government.

A question of great national importance has been settled to the satisfaction and advantage of the country at large at the expense of this single private interest, and, in effect, the property of this company has been taken for public purposes. In such cases it has been the uniform policy of Congress to recognize the application of the constitutional provision that just compensation shall be made, as appears from the memorandum appended hereto, showing the action of Congress in making indemnity for injuries suffered on the settlement of the northeastern boundary between Maine and New Brunswick.

This committee therefore recommends the appropriation of the sum of \$200,000 as compensation in full for the injuries suffered by the Wales Island Packing Company in consequence of the settlement of the Alaskan boundary.

The report of the Secretary of the Department of Commerce and Labor is appended hereto.

Abundant precedents for allowing compensation for the injury suffered in this case in consequence of the decision of the Alaska Boundary Tribunal will be found in the action taken by Congress in connection with the settlement of the Maine boundary dispute.

The question of the liability of the United States for losses suffered by its citizens in consequence of the settlement of the northeastern boundary arose under the treaty of Washington (1842).

The situation in the territory in controversy between Maine and New Brunswick is briefly stated in the report of the Senate Committee on Claims (44th Cong., 1st sess., Report No. 466) as follows:

In the year 1835, in consequence of the disagreement as to the boundary, it was arranged between the two Governments, as appears from the diplomatic correspondence, that both Governments should suspend the exercise of jurisdiction over the disputed territory (which included these lands) until a final adjustment of the controversy. This diplomatic understanding was adhered to until the convention of 1842 composed the troubles, with the exception that the authorities of Maine, in 1839, interfered by force to protect the valuable timber forests from depredations. During the period of suspended jurisdiction, principally from 1832 to 1839, and while the owners were powerless to protect their rights and interests, these lands were settled upon and the valuable growth of timber thereon removed by the subjects of Great Britain from the contiguous province. Under the operation of the fourth article of the treaty of 1842, these "squatters," who had been in actual possession for six years before the date of the treaty, were confirmed in their titles, to the exclusion of the proprietors, whose title was derived under their grants. Judicial determinations fully establish this construction and give effect to it. (See *Little v. Watson*, 32 Maine R., 214.)

• Three classes of claims growing out of this state of facts were presented to Congress for settlement; first, the claims of the individual owners of lands which fell within the jurisdiction of the United States upon the reconstruction of boundaries, but which the proprietors were dispossessed of under the fourth article of the treaty and the title thereto vested in British subjects (commonly referred to as the possessory claims); second, the claims of the individual owners of lands which passed to Great Britain under the reconstruction of the boundaries and of which the proprietors were dispossessed under the fourth article of the treaty (commonly referred to as the variation of the boundary line claims), and third, the claims of the proprietors to compensation for the removal of timber during the suspension of the jurisdiction of Maine under the agreement between the United States and Great Britain (commonly referred to as the timber depredation claims).

These claims were collectively and separately given careful consideration by Congress, and the recommendations of the committees of Congress charged with the investigation thereof are found in a number of reports made from time to time as the claims were presented, a list of which reports is given below. These reports, without exception, recognize the obligation of the Government to make compensation for the losses arising in consequence of the taking or injury of private property by the Government for the settlement of national questions.

The following extracts from these reports will sufficiently indicate the position taken by Congress on these questions:

[Committee on Claims, House Report No. 386, Forty-third Congress, first session.]

As both Governments had abstained from exercising jurisdiction over this territory between the years 1832 and 1842, the squatters from the adjoining province had had a peaceful occupancy of these lands for more than six years, and they had, therefore, according to the provisions of the fourth article of the treaty just recited, acquired titles which the treaty states "shall in like manner," etc., so that these lands were absolutely and entirely lost to the American owners, who were deprived of them by the action of their Government.

The country demanded this in the interest of peace, and they had to make the sacrifice, but the propriety of indemnifying those parties who have thus suffered through the necessities of diplomacy seems to be beyond the possibility of a doubt.

* * * * *

Congress has therefore passed several bills to pay the owners of lands thus taken from them, and when the last one passed, the amount claimed in this bill was omitted because it had not then been accurately ascertained. This bill calls for compensation for all the land, not heretofore paid for, and all the timber that was upon it, that was ceded to the British Government under the treaty of 1842.

* * * * *

The committee believe that when citizens are deprived of property by the direct and authorized action of the Government they are entitled to a just remuneration.

* * * * *

Your committee respectfully submit herewith a bill providing for the payment of \$3 per acre, the same to be in full payment for the land and the timber taken therefrom, and recommend its passage.

[Senate Report No. 466, Committee on Claims, Forty-fourth Congress, first session.]

The obligation of the Government to make this indemnity seems too clear for discussion, and is confessed by abundant precedent. In recognition of this obligation the Federal Government, by express provision of the treaty, allowed to the States of Maine and Massachusetts \$300,000 for their public lands within the territorial cession.

By the act of July 12, 1862, Congress admitted and satisfied claims made for lands of individual owners which fell within the jurisdiction of the United States upon the reconstruction of boundaries, but which the proprietors were dispossessed of under the fourth article of the treaty and the title thereto vested in British subjects. The lands specified in this bill constituted a portion of the townships granted by Massachusetts, which, at the date of the grants, were indisputably a part of her public domain. By the establishment of the conventional line of 1842, a section of these townships remained, as before, within the Federal jurisdiction, and a section was transferred to the British Crown. As to the whole, the American owners were dispossessed. For the part which fell within the jurisdiction, the Federal Government, acknowledging its liability, has made compensation. For the part which passed to the foreign jurisdiction, the bill under consideration proposes indemnity.

The right to compensation in the two cases seems identical. It is pertinent to recall that a pecuniary compensation was made to the States of Maine and Massachusetts for their public lands so transferred to the British Government, and of the lands so paid for by the Federal Government a part occupied the same relative position as those covered by the provisions of this bill. Surely the right of the private proprietor to compensation should not be held less than the right of the State.

[Committee on Foreign Relations, Senate Report No. 88, Thirty-seventh Congress, third session.]

Upon the whole case, the committee believe that the United States are under obligations to quiet the settlers upon the public lands of Massachusetts and Maine, under the fourth article of the treaty of Washington, by procuring for them releases of the titles to their lots, and that for this purpose an appropriation should be made equal to the fair value of these lots.

* * * * *

The treaty of Washington having been concluded in 1842, and the final ascertainment of possessory rights under the fourth article having been made in 1854, the committee believe that the duty of the United States in the premises should be discharged without further delay; and therefore report the accompanying bill.

[Committee of Claims, House Report No. 72, Thirty-seventh Congress, second session.]

The treaty accomplished public purposes of the gravest consequence, preserved the public peace, defined and settled the boundaries of two nations, and settled important rights for each for all future time. When to secure such weighty public purposes it became necessary to interfere with private property, that property was just as clearly taken for a "public use" as it would have been had it been taken for a fort or a garrison to carry on the very war which indeed had been begun, but was happily averted by the treaty. There is no question as to the title of the proprietors, and the committee therefore conclude that their claim for the land is strictly within the constitutional rule that private property shall not be taken for public use without just compensation.

The third and last question, as to the right of the proprietors to pay for timber removed, depends upon the same principle as the second, though it is presented in a different form. The land was taken by the direct action of the Government through the treaty; the timber was not taken by the Government, but was lost to the proprietors through the direct action of the Government.

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The committee, therefore, allow the claim for timber.

[Committee of Claims, House Report No. 458, Thirty-sixth Congress, first session.]

In respect to depredations upon the timber on other lands in Eaton and Plymouth not included in the "possessory" claims, and for which compensation is provided in the third section of the bill, your committee adopts the language of a report made in behalf of the House Committee of Claims of the Thirty-fourth Congress, by Mr. Knowlton, and approved, in behalf of the committee of the Thirty-fifth Congress, by Mr. Maynard, to wit:

* * * * *

"From public considerations connected with the peace of the country, their property was placed out of that protection of the laws which is the common right of all our citizens, and their claim to be indemnified for resulting losses would seem to be well founded."

[Committee of Claims, House Report No. 254, Thirty-fourth Congress, third session.]

It appears from the testimony in this case that the title of 8,434 acres of land in the Eaton grant and Plymouth Township was transferred from the private proprietors of the same to the settlers in possession by the operation of the fourth article of the treaty of Washington. Private property having thus been taken for public uses, the principles of justice and the express requirements of the Constitution impose upon this Government the duty of making compensation for the property so taken. The principle involved is the same as in the case of Josiah H. Little, a resolve for whose relief was unanimously agreed to by this House at its first session.

It further appears from the testimony in this case that the valuable pine timber upon the Eaton grant and the Plymouth township was subjected to extensive depredations, commencing about the year 1833; that those depredations were committed by the citizens of New Brunswick, and that the owners were disabled from protecting their property in consequence of an arrangement entered into between the United States and Great Britain in 1832, by which the jurisdiction of Maine over this part of the so-called "disputed territory" was agreed to be suspended until the final determination of the controversy. While Maine did not admit the authority of the United States to bind her by any such arrangement, it appears that she did, in deference to the wishes and solicitation of the United States, forbear to assert her jurisdiction, even against trespassers, until the year 1839. It is for the losses of timber suffered during this period, from 1832 to 1839, and in consequence of an arrangement of this Government suspending the jurisdiction of Maine, that the parties injured now ask compensation.

From public considerations connected with the peace of the country their property was placed out of that protection of the laws which is the common right of all our citizens, and their claim to be indemnified for resulting losses would seem to be well founded.

[Committee of Claims, Senate Report No. 41, Thirty-fourth Congress, first session.]

It appears that by virtue of this stipulation (fourth article, treaty of Washington) about 75 acres of improved land lying in the disputed district and to which the petitioner held a title derived from the State of Massachusetts, but which was granted in 1841 by the authorities of New Brunswick to another party, was confirmed to the last-mentioned grantee, thereby ousting the petitioner of an otherwise valid title.

* * * * *

The committee think that when a citizen is deprived of his title to property by the direct and authorized action of the Government he is entitled to a fair remuneration.

See also Committee on Claims, House Report No. 394, Thirty-fifth Congress, first session; Committee on Claims, Senate Report No. 168, Thirty-fifth Congress, first session; Committee on Claims, Senate Report No. 323, Thirty-fourth Congress, third session; Committee on

the Judiciary, Senate Report No. 361, Thirty-second Congress, second session; resolution of legislature of Maine, referred to Committee on Foreign Affairs, House Miscellaneous Document No. 41, Forty-first Congress, third session; memorial referred to Committee on Finance, Senate Miscellaneous Document No. 91, Thirtieth Congress, first session.

Congress acted favorably upon the recommendations contained in these reports. This will sufficiently appear from the act of July 12, 1862, which is the last of a series of appropriations for compensation on account of these losses.

In this act an appropriation is made in full compensation for land, including the timber previously taken therefrom, to which the claimants "lost title by operation of the fourth article" of the treaty of 1842, and a further appropriation is made in full compensation for the timber taken from other lands owned by certain of the claimants, which timber was taken off and lost to the proprietors "in consequence of the diplomatic arrangement entered into between the United States and Great Britain in 1832, by which both parties agreed to abstain from the exercise of jurisdiction in said territory." (12 Stat. L., 540.)

The parallel between these cases and the present case is obvious. There, as here, in the language of the reports above quoted:

The treaty accomplished public purposes of the gravest consequence, preserved the public peace, defined and settled the boundaries of two nations, and settled important rights for each for all future time.

And to quote the language of the report further:

When to secure such weighty public purposes it became necessary to interfere with private property, that property was just as clearly taken for a "public use" as it would have been had it been taken for a fort or a garrison to carry on the very war, which indeed had been begun, but was happily averted by the treaty.

In those cases the land and the timber for which compensation was made was not taken by the Government, but was lost to the proprietors through the direct action of the Government. So in this case the property and business of this company was not actually taken by the Government, but its value was destroyed by the direct action of the Government, and so here, as there, it is just as clearly taken for "public use," and just compensation for it should be made.

In addition to and independently of the compensation granted by Congress on account of the losses suffered by the individual citizens, special compensation was made by the Government to the States of Maine and Massachusetts for the national advantages to the country at large derived from the surrender of a portion of the territory of these States in settlement of the boundary dispute.

The fifth article of the treaty of 1842 provided that the United States should pay to Maine and Massachusetts "the further sum of \$300,000 in equal moieties, on account of their assent to the line of boundary described in this treaty, and in consideration of the conditions and equivalents received therefor from the Government of Her Britannic Majesty."

The evident purpose of this article is stated in the Report of the Senate Committee on Foreign Relations, No. 88, Thirty-seventh Congress, third session, as follows:

It thus abundantly appears that the \$300,000 stipulated by the fifth article of the treaty to be paid to Maine and Massachusetts had no reference to the lands lost by them under the fourth article, but was solely for their assent to a new line of boundary and their consequent loss of territory north of the St. Johns River. And it also

appears that this sum was not paid to them either as a gratuity or as an indemnity for their loss of territory, but as the assessed value of the cession obtained for it elsewhere by the United States of territory undoubtedly British, on the north of New Hampshire, Vermont, and New York, and of the settlement in favor of the United States of disputed points in respect to a valuable island in the St. Marys River and to the boundary line west of Lake Superior.

The parallel between those cases and this is again obvious. In both instances, as a direct result of governmental action, the national interests are greatly benefited at the expense of the local interests, and in both instances the duty of the Government to indemnify the injured parties is clear.

In the language of one of the reports above quoted:

Surely, the right of the private proprietor to compensation should not be held less than the right of the State.

[House Document No. 510, Fifty-eighth Congress, second session.]

DEPARTMENT OF STATE,
Washington, February 3, 1904.

SIR: I have the honor to transmit herewith a memorial of the Wales Island Packing Company, a corporation organized under the laws of the State of New York and engaged in the business of fishing and canning salmon and other fish, whose establishments and interests on Wales Island have, by decision of the Alaska boundary tribunal, been placed on the Canadian side of the boundary, a fact which, it is stated by the company, will prevent a continuance of their business and will render their property valueless.

Earnestly inviting the attention of Congress to the grounds upon which relief is sought by the company, I submit the memorial for such action as in the judgment of Congress the equities of the case may warrant.

A similar letter has been addressed to the President pro tempore of the Senate.

I have the honor to be, sir, your obedient servant,

FRANCIS B. LOOMIS, *Acting Secretary.*

HON. JOSEPH G. CANNON,
Speaker of the House of Representatives.

MEMORIAL.

The SECRETARY OF STATE,
Washington, D. C.

SIR: The memorial of the Wales Island Packing Company respectfully calls attention to the effect of the decision of the Alaskan boundary tribunal upon the affairs of this company, and requests that such steps may be taken for its relief as are appropriate under the circumstances.

The Wales Island Packing Company is a corporation organized under the laws of the State of New York and its entire capital stock is owned by American citizens. The business of the company, as its name indicates, is fishing and canning salmon and other fish, which has been carried on at its factory and plant established for that purpose on Wales Island, in Portland Canal, on the southeastern coast of Alaska, a general description of which establishment is found in the Report on the Salmon Fisheries of Alaska, dated December 20, 1902, by the special agent of the Treasury Department, and printed as Senate Document No. 113, Fifty-seventh Congress, second session. This description is as follows:

"*Wales Island.*—Visited the new plant of the Wales Island Packing Company on June 28 at 8 a. m. This cannery is on Pierce Inlet, opposite Port Simpson, at the mouth of Portland Canal. The establishment is of the most approved type and complete in every detail for the prosecution of a successful business. The main building is 320 by 60 feet; warehouse, 36 by 56 feet; Chinese quarters, 26 by 60 feet; mess house, 24 by 40 feet; native quarters, 24 by 40 feet; store, 24 by 40 feet, and superintendent's residence, 14 by 24 feet. There are other buildings, occupied by natives. The machinery is all of the latest patterns and the general equipment calculated for a large pack. The headquarters of the new company are at Seattle, Wash., and the officers are H. L. Cammann, president; S. J. Churchill, vice-president; Pierre Mali,

secretary and treasurer; Howard Pratt, superintendent. The situation of the cannery is such as to warrant the belief that the accessible waters will afford plenty of fish for a permanent and successful operation of the plant, as no other is within 50 or more miles of it, and the streams thereabout have not been fished to any great extent. The plant was outfitted for the first season to pack 30,000 cases, and though nothing had been done at the time of my visit, the run being unusually late, the manager was confident that a fair pack would be made. The statistics given elsewhere show that upward of 16,000 cases were put up, which, all things considered, was quite as good a showing as the company had reason to expect. A hatchery site has been selected, and it is the intention of the Wales Island Packing Company to push the enterprise vigorously and leave undone nothing that will make for the complete success of the enterprise."

The following reference is also made to this cannery in the log of the season's cruise, printed in the same report:

"June 28.—After making stops at convenient ports for the night, the *Perry* arrived at Wales Island, Alaska, at 10 a. m. this day. Here has been established a new cannery by the Wales Island Packing Company. Wales Island is situated in Portland Canal, immediately across the line from British Columbia. The new plant is the most southeasterly of all the Alaska packing houses."

As stated in that report, this plant is the most southeasterly of all the Alaska packing factories, and no other plant is within 50 or more miles of it on the United States side of the boundary. Prior to its establishment there no cannery had been built in southeastern Alaska south of Cape Fox, which marked the limit of the fishing grounds available for canneries established above that point.

This cape formed a natural and effective barrier against the extension beyond that point of the operation of the fisheries carried on above it, inasmuch as the passage around it is difficult and dangerous, owing to the character of the tide currents there and to the conformation of the coast, which leaves this cape very much exposed to the winds and waves sweeping in from the ocean. There are, however, many valuable fishing grounds in the waters of Alaska to the southward and eastward of this cape, and in order to take advantage of them it was necessary, for the reasons above stated, to establish a cannery in their immediate neighborhood. To find a suitable locality for that purpose a careful search was made covering the whole region, which search continued upward of two years and finally resulted in finding the site acquired by this company on Wales Island. This site proved to be not only the only site suitable for such purposes in the entire neighborhood on the American side of the boundary as then established, but also most conveniently located with reference to the best fishing grounds and most peculiarly well-fitted by its natural advantages for the purposes of a cannery.

The fishing grounds, which, as above stated, were readily accessible from this site, proved to be practically inexhaustible. The "Sockeye" salmon, which command the highest market prices, were found to abound in that neighborhood, and by the establishment of hatcheries for the propagation of this particular quality of fish, which has already been undertaken, the company was insured a permanent supply of this most valuable breed of salmon sufficient for the entire output of its factory. It is obvious, therefore, that the natural conditions surrounding this site on Wales Island gave it a peculiar value. It has at hand a convenient and inexhaustible supply of fish. It was free from any chance of rivalry or interference on the part of other factories, because, as above stated, there was no other available site for a factory in that neighborhood, and the factories on the other side of Point Fox were unable to extend their operations beyond that point. This site, therefore, had practically the exclusive right to enjoy the entire fishing resources of the neighborhood on the United States side of the boundary line as then established.

Apart from these exclusive advantages, this site offered the further advantage of being within easy reach of the regularly traveled steamer routes along the coast, giving ready access to it at all times and reducing its transportation charges to the lowest rates. Furthermore, as stated in the report above quoted, it was the most southeasterly of all the Alaskan packing houses and therefore nearest to its market, both for its supplies and its output.

The special advantages of this location for its purposes need not be further dwelt upon here, but reference is made to the expert opinion of those skilled in such matters for confirmation of the above statements. This site, so preeminently suitable for the purposes of the company, having been found, such steps were taken as were necessary under the laws of the United States regulating the acquisition of factory sites in Alaska to perfect the title of the company thereto, and the factory and equipment of the company for the purposes of this business was there established.

The plant of the company was constructed on this island in the year 1902, and was outfitted, as stated in the report above quoted, for the first season to pack 30,000

cases, but owing to the delay in completing the plant and to the lateness of the season only 16,000 cases were put upon the market that year. During the second season, in the following year, the capacity of the plant was increased and its output for that season was 35,000 cases. Its present capacity is for 50,000 cases, and in view of its equipment and the abundance of its fisheries a regular annual output up to its full capacity was assured.

Proof of the character and validity of the title acquired by the company and of the extent and value of its vested interest will be submitted whenever an appropriate opportunity for that purpose can be granted to the company.

Such, then, was the situation of this company when the decision of the Alaskan boundary tribunal was rendered, carrying the boundary line through the channel to the westward of Wales Island and placing this island within the Dominion of Canada, and with it the establishments and interests of the Wales Island Packing Company.

The justification of this company in locating on territory which by the decision of the Alaskan boundary tribunal has been held to belong to Canada will be found, if any is needed, in the repeated and familiar assertions of title and exercise of sovereignty over this island both by the executive and legislative branches of the United States Government, from the time of the purchase of Alaska from Russia down to the date of the decision of the Alaskan boundary tribunal. The grounds upon which such claim was made are fully set forth in the presentation of the case of the United States before that tribunal, and need not be repeated here further than to cite one instance which is particularly pertinent to this case.

In September, 1896, the War Department, under the authority of Congress, caused a storehouse to be built upon Wales Island, and in one of the wall stones in a conspicuous part of this house was carved the words "U. S. property. Do not injure." This property stands within a few miles of this company's establishment and its existence was known to the company at the time it located its establishment on that island.

It is a well recognized rule of law under the decisions of the United States Supreme Court that the determination of the question of national title and sovereignty over territory by the executive and legislative departments of this Government is conclusive, both with respect to the citizens and the courts of the United States. When, therefore, the authorized branches of the Government asserted title to this island every citizen of the United States was justified in relying upon such assertion as a conclusive determination, so far as he was concerned, of whatever question might elsewhere be raised as to the title to such island.

Furthermore, it must be remembered that the assertion of title on the part of the United States to Wales Island was made in a most vigorous and uncompromising manner, and that such assertion was supported by an act of sovereignty so decisive as the construction on that island of a Government storehouse, which was in existence and is shown to have been known to this company at the time it located there. It follows, therefore, that this company was justified in relying upon the assurance thus given by the Government that its sovereignty extended over this island, and all vested interests acquired by the company in such island in reliance upon such assurance are entitled to the protection and support of the Government.

The practical effect of the decision of the Alaskan boundary tribunal upon this company, under the existing conditions, is to prevent the continuance of its business and to render its property valueless. Its former fishing grounds, with respect to which this site was selected, are all left on the United States side of the boundary, as laid down by this decision, and consequently are no longer available to this company. On the Canadian side of the line there are no fishing grounds in the immediate neighborhood of the establishment of this company. Such fishing grounds as are to be found on the Canadian coast are so inconveniently placed that it is practically out of the question for this company to attempt to do its fishing there. Furthermore, such Canadian fisheries as there are have all been appropriated by Canadian companies located within convenient reach, and the fishing industry on the Canadian side, in this neighborhood is already overcrowded.

This company therefore, operating at a disadvantage on account of the distance and inconvenience of the fisheries and in competition with companies more favorably located, and on fishing grounds already overcrowded, could not hope to continue its business profitably on the Canadian side of the line. For the same reasons this company can not hope to dispose of its establishment and business profitably as a going concern to any Canadian interest.

Moreover, there is a serious question as to whether the Canadian government will confirm the title of this company to its location and permit a fishery to be carried on there. It has been announced on behalf of that government that the entire territory in the region of Port Simpson is reserved by the Crown and is not open for private

occupation. It is evident, however, that even if the Canadian government should confirm the company's title to its present location the difficulties in which the company finds itself would not be removed. It still would be unable to continue its business or dispose of its business profitably there.

Neither would it be possible for the company to reestablish itself on a new site and continue its business on the United States side of the line, because, as above stated, there is no available site within reach of the fisheries in that neighborhood upon which an establishment could be constructed. A location for a packing factory requires certain peculiar natural conditions, which are not readily found on that coast. A stream furnishing a plentiful supply of fresh water is one of the essential features; another is that there must be a good harbor for large boats, and there must also be an anchorage for such boats; and the shore must be sufficiently level to permit the erection of the necessary buildings and plant, each of which requirements is extremely difficult to find on this portion of the Alaskan coast, and it is a most unusual thing to find them all in conjunction. It is well known that good harbors and anchorages for vessels are rarely found anywhere in Alaska, and throughout this entire region the shores are generally formed by precipitous cliffs or mountain slopes rising abruptly from the water's edge, leaving no space available for the location of a factory plant.

Moreover, the character of this packing factory and plant is such that it would be impossible to move it to advantage. One of its chief features is a pier of heavy timbers resting on piles, upon which is constructed the factory building. The cost of moving work of such a character would be more than the cost of replacing it by an entirely new structure. Furthermore, a large item in the expense of establishing this plant has been the improvements and alterations in the natural surroundings, such as clearing the woods, grading, etc., and constructing a flume for the fresh-water supply upward of a mile and a quarter into the island. Such improvements as these pertain to the soil and on any new site similar work would have to be done anew, so that they represent no value which could be transferred to a new plant.

Under all the circumstances, therefore, it is evident that as the matter now stands the company is debarred from continuing its business or even profitably disposing of its property, without some action by the United States Government, to which the company must look for relief from the difficulties forced upon it through no fault of its own.

This company therefore prays that if this Department finds itself unable to grant relief adequate to the necessities of the case the question be brought to the attention of Congress in some appropriate way for such relief as may be proper under the circumstances.

And your memorialist will ever pray, etc.

THE WALES ISLAND PACKING COMPANY,
By H. L. CAMMANN, *President*.

JANUARY 27, 1904.

NEW YORK, *March 30, 1904.*

DEAR LODGE: I have a letter from Chandler Anderson asking me to express my opinion regarding the bill for the relief of the Wales Island Packing Company for injuries suffered on account of the transfer of the possession of Wales Island from the United States to Canada under the decision of the Alaska Boundary Tribunal. I understand that company, two or three years ago, put up a packing house on Wales Island and now finds the international boundary line drawn between its packing house and its fishing grounds so that it is almost impossible for it to do its business. In view of the fact that our Government had given public notice that the island was ours by putting up a Government building on the island, and under all the circumstances it seems to me that these people ought to be compensated. The decision of the tribunal undoubtedly secured great benefits to the people about the head of Lynn Canal, and about the only one who suffers is this packing company. I think it would be very unfair to let the burden rest upon them. You may say this for me to the chairmen of the appropriations committees in the Senate and House, and to any other Senator or Member who exhibits a desire to learn the opinions of the American members of the tribunal.

Faithfully, yours,

ELIHU ROOT.

HON. HENRY CABOT LODGE,
United States Senate, Washington, D. C.

DEPARTMENT OF COMMERCE AND LABOR,
OFFICE OF THE SECRETARY,
Washington, April 11, 1904.

MY DEAR SIR: Referring to your letter of the 28th ultimo, stating that the Committee on Foreign Relations would be glad to hear from me on the subject of the claim of the Wales Island Packing Company, and the amount, if any, which should be paid, I beg to make the following statements:

This Department has been furnished with a detailed statement of the claim of the claimant, consisting of 37 or more typewritten pages, with exhibits showing the conveyances to it of its property upon Wales Island, record thereof in the proper offices of registry in the United States, receipts for taxes paid by it to United States officials, etc. The statement of the claimant company is verified in a modified form by its president. I shall be pleased to forward these papers to you in case duplicates thereof have not already been filed with you, or if for any other reason you desire them.

The agent of the Department for the Alaskan salmon fisheries, Mr. Kutchin, has, in the performance of his duties, visited the plant of the claimant, its fishing grounds and all the waters of that portion of the Alaskan coast, and is familiar with the condition of the industry, as well as with the business of the claimant.

This Department feels that it is warranted, from the information that it possesses, in making the following statements of fact:

First. The Wales Island Packing Company was incorporated under the laws of the State of New York on January 8, 1902, to engage in the business of packing salmon and for other commercial purposes in the district of Alaska.

Second. The said corporation constructed a suitable plant for the successful prosecution of the said business enterprise on the northerly side of Wales Island, which at that time was in the actual and undisputed possession of the United States, and over which the United States then exercised a right of sovereignty which apparently was not publicly challenged by Great Britain.

Third. The site chosen by the claimant was secured by it by the purchase of private rights and by application for a patent from the United States General Land Office.

Fourth. The said plant was operated during the fishing seasons of 1902 and 1903.

Fifth. The boundary line between the United States and Canada, as determined by the Alaskan Boundary Tribunal, is such that the claimant's cannery is in Canada, while its fishing grounds are in territory still recognized as belonging to the United States.

Sixth. The United States tariff on the product of the claimant is such as practically to shut it out from the United States market.

Seventh. The agent of the Government for the Alaskan fisheries reports in substance that the claimant can not continue its business in Canada because—

(a) The waters mainly fished to supply the cannery remain under the sovereignty of the United States, and the catch in American waters could not, under existing laws, be delivered to and packed in a Canadian cannery.

(b) The Canadian waters legally accessible to the packing plant are insufficient to supply a cannery of the capacity of the claimant's cannery, even though the claimant were permitted to do business in Canada.

(c) It is doubtful if the claimant, as a foreign corporation, could secure recognition of its existing property rights on Wales Island.

(d) The claimant at present has no established Canadian trade. It is improbable, according to the report of the agent for the Alaskan fisheries, that the claimant "could replace itself in anything like so favorable an environment in southeastern Alaska for the prosecution of the salmon-packing industry," and, if it did so, it would necessarily suffer the loss of a considerable portion of the moneys expended by it on Wales Island. It is impossible to make this stronger than a statement of probability without making a prolonged, careful, and minute exploration of this section of the Alaskan coast.

Eighth. The capital stock of the claimant is \$60,000, of which \$20,000 appears to have been an issue of stock in payment of services rendered in connection with the location of the site, expenses of organization, etc. The total amount of capital invested (as appears from the claimant's own statement) is \$101,689.60, inclusive of said \$20,000. The sum of \$101,689.60 also includes the sums of \$6,391.50 and \$2,105.77, the inventory values of manufacturing supplies left over and store supplies on hand. The actual value of the last two items will be materially reduced by reason of the inability of the claimant to continue its business.

Ninth. The earnings of the claimant for the year 1903 were \$31,103.06, its market being almost wholly within the United States.

Tenth. The claimant asserts that it is equitably entitled to be paid, not only the \$101,689.60 which it invested in the business in reliance upon the representations of the United States as to its rights of sovereignty over Wales Island, but also that it should be repaid, as stated in the appendix, to its claim marked "Investment account, Wales Island Packing Company," the sum of \$150,000 for the "value of location, inclusive of fishing rights and other values arising from the condition of the business as developed incident to the operation of it as a going concern," making the total value of the investment, as stated by the claimant, \$251,689.60. In the detailed statement of the claim claimant asks for \$259,192.33 as the value of its business as a going concern, based upon a capitalization, upon a 12 per cent basis, of its earnings for 1903, of \$31,103.06.

Eleventh. Had the claimant been compelled to pay in the year 1903 a tariff upon its product shipped into the United States, it could not have made a profit of \$31,103.06, or any other profit; it could not have successfully conducted its business. The earnings for 1903 arose from the failure of the United States to impose tariffs, which the subsequent decision of the Alaskan Boundary Tribunal as to the location of the boundary line would have made proper.

Twelfth. The location of the claimant's plant and fishing grounds has in no way been changed, and the conditions of the business and the legal right to enter markets of the United States and Canada have in no way been changed by the decision of the Alaskan Boundary Tribunal. That decision was a judicial finding of certain facts.

Thirteenth. The sum of \$150,000 claimed as the "value of location inclusive of fishing rights and other values arising from the condition of the business, etc.," does not represent the value of the actual location or of existing conditions, as determined by the Alaskan Boundary Tribunal, but rather of the supposed location and of supposed conditions, the belief or supposition of the claimant being in accord with the belief and representations of the Government of the United States.

The amount which should be allowed would seem to depend entirely upon the rule of equitable liability which Congress may see fit to adopt. If Congress takes the view that the decision of the Alaskan Boundary Tribunal determined that Wales Island is not and never was a part of the United States, but that the Government of the United States having represented it to be a part of the United States and thus led the claimant to invest money thereon, ought therefore to pay to the claimant the value of the property with which it parted in reliance upon such mistaken representations, then the amount of the capital actually invested, less any present market value it may have, would seem to be a fair allowance. This amount could not exceed \$101,689.60, less proper deductions. If Congress takes the view that Wales Island was really a part of the United States at the time of the establishment of claimant's business, and that the action of the Alaskan Boundary Tribunal or the acquiescence therein by the United States was virtually a cession of jurisdiction over it, and if Congress is satisfied from the evidence submitted in support of the claim that the business of the claimant has been virtually destroyed, and can not be reestablished elsewhere upon a profitable basis, then the value of the business based upon its earning capacity would be a fair allowance.

If the latter view be taken by Congress, a valuation based upon capitalization of earnings upon a 12 per cent basis could not be held improper, but it is the opinion of this Department that, in view of the hazardous nature of the business of salmon packing, a larger annual return than 12 per cent may fairly be expected, and that a more conservative and proper valuation would be upon a capitalization upon a basis of 15 per cent, which would make the value of the company's business, if it ever actually was located in the territory of the United States, \$200,000.

Respectfully,

GEO. B. CORTELYOU, *Secretary.*

HON. S. M. CULLOM,

Chairman of Committee on Foreign Relations, United States Senate.

SPOKANE, WASH., April 1, 1904.

MY DEAR SENATOR: With reference to the proposition to compensate the Wales Island Packing Company for its improvements on Wales Island, said island being one of those in Portland Canal turned over to Great Britain under the recent award of the Alaskan Boundary Tribunal, it seems to me that that company has a moral claim to such action at the hands of the Government. Under the operation of the coasting laws of Great Britain and the customs laws of this country, it is impossible for the company to carry on its business. The site of the packing plant, the wharf and

other appurtenances, have therefore ceased to have any value and the machinery in the plant has become nothing but junk. There can be no doubt that the effect of the decision of the tribunal was to destroy the property of the company. The company put up the plant and invested its money on the strength of the sovereignty of the United States. It is not too strong a statement to say that our laws invited it to do so.

Therefore, when we relinquished that sovereignty and denied those who had accepted our invitation the benefit of our protection, we ought to make good their losses. If the cession of sovereignty had been by statute or directly by treaty, there can be no doubt that provisions would have been made for the protection or compensation of American citizens affected by the act. That the cession was the result of judicial decision provided for by treaty can not alter the moral status of the transaction. The effect is the same. Undoubtedly, if it had been supposed that any substantial rights were to be destroyed as the result of the decision of the tribunal, one way or the other, provision would have been made in the treaty for compensation. The decision of the tribunal, moreover, while binding on the two countries and binding the citizens of the two countries in a political capacity, is not a binding adjudication as between the governments and their citizens concerning the rightfulness of the cession so far as the cession affects claims for compensation. What I mean is that while the decision of the tribunal shuts the mouths of our citizens to question that sovereignty has been, in fact, transferred by it, it does not shut their mouths to say that the decision was wrong, and as a consequence that anyone affected is entitled to compensation. However, this is refining beyond any necessity. The broad proposition, and the only one necessary to be considered, is that no government, having invited its people to settle and make improvements within its territory, has the moral right to turn that territory over to a foreign power without providing for the protection or full compensation of those who have accepted that invitation.

I feel an interest in this matter by reason of my connection with the Alaska Boundary Tribunal, and also by reason of the fact that I know something, through the representation of those on the coast, in whom I have confidence, of the genuine hardship imposed on the Wales Island Packing Company, but I have no other interest in the matter. You are at liberty to use this letter in any way that you see fit.

Sincerely, yours,

GEORGE TURNER.

Hon. H. C. LODGE, *Washington, D. C.*

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